same as heretofore entered, appearing in person and by David Bates, his attorney; wherefore defendant was duly arraigned on an indictment returned by the Grand Jury charging him with the crime of ASSAULT WITH A DANGEROUS WEAPON, reading waived; upon being informed of his rights, defendant enters a plea of NOT GUILTY and the matter is continued for trial, and

IT IS ORDERED that defendant be remanded to the custody of the Sheriff of Marion County, Oregon.

VAL D. SLOPER
Circuit Judge

* * * *

VERDICT--Filed October 11, 1968

[Caption Omitted in Printing]

We, the jury in the above entitled criminal action find the defendant GUILTY of the charge of "Assault with a Dangerous Weapon".

/s/ Robert F. Simon
(foreman)

/s/ Robert W. Robertson

/s/ Velda V. Inglis

/s/ Marjory Woodrum

/s/ Madge M. Boedigheimer

/s/ Patricia A. Zier

/s/ Dorothy J. Brown

/s/ Michael D. Chase

/s/ Vermont Stipper

/s/ Frances J. Holloway

/s/ Juliana Bankston

* * * *

MOTION AND AFFIDAVIT—Filed March 21, 1969

[Caption Omitted in Printing]

Comes now the defendant-appellant and moves the Court for an order supplementing the record herein to include the polling of the jury.

This motion is made pursuant to ORS 19.078(3) and the affidavit attached hereto and by this reference made a part hereof.

Dated this 21st day of March, 1969.

GARY D. BABCOCK
Public Defender
Attorney for Defendant

STATE OF OREGON)
SS.
COUNTY OF MARION)

I, David Bates, being first duly sworn, on oath depose and say that I was the trial attorney for the defendant-appellant herein; that subsequent to the jury's deliberations herein I requested that the jury be polled; that said jury was polled and their vote was eleven to one in favor of guilt; that the parties herein will suffer no prejudice in having the record supplemented to include the aforementioned facts; that said supplementation of the record is necessary in the interests of justice.

DAVID BATES

Subscribed and sworn to before me this 12th day of March, 1969.

EDITH M. BATES
Notary Public for Oregon
My Commission Expires:
8-17-71

* * * *

ORDER—Filed March 24, 1969

[Caption Omitted in Printing]

This matter coming before the Court upon the motion of Gary D. Babcock, defendant's attorney, for an order supplementing the record herein to include the polling of the jury; and it appearing that there is good cause therefore,

IT IS HEREBY ORDERED that the polling of the jury be, and the same is hereby, made a part of the official record on file herein.

Dated this 24th day of March, 1969.

/s/ Douglas L. Hay
Circuit Judge

* * * * *

JUDGMENT—Filed October 14, 1968

[Caption Omitted in Printing]

This matter coming on regularly for trial by jury in the above entitled Court on the 11th day of October, 1968, before the Honorable Douglas L. Hay, Circuit Judge; the defendant appearing in person and with his attorney, David Bates, and the State of Oregon appearing by and in the person of Gary D. Gortmaker, District Attorney for Marion County, Oregon; and

IT APPEARING TO THE COURT from the files and records herein that the defendant, above named, heretofore and on the 19th day of September, 1968, appeared in open Court in person and with his attorney, David Bates, and the State of Oregon appearing by and in the person of Gary D. Gortmaker, District Attorney for Marion County, Oregon, and said defendant was duly arraigned upon an indictment theretofore and on the 17th day of September, 1968, found and filed by the Marion County Grand Jury, charging him, the said defendant,

with the crime of ASSAULT WITH A DANGEROUS WEAPON, committed in Marion County, Oregon, on the 27th day of April, 1968, and when asked by the Court for his plea to said indictment the defendant answered "Not Guilty" and the matter was continued for trial; and

IT FURTHER APPEARING TO THE COURT that on the 11th day of October, 1968, a verdict of "Guilty" was returned by the duly empaneled jury upon the trial of said cause; NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant, Robert Apodaca, is guilty of the crime of ASSAULT WITH A DANGEROUS WEAPON; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendant be, and he hereby is, committed to the legal and physical custody of the Corrections Division of the Oregon State Board of Control for an indeterminate period of time, the maximum of which is five (5) years.

Dated at Salem, Oregon, this 14th day of October, 1968.

/s/ Douglas L. Hay
Circuit Judge

* * * *

NOTICE OF APPEAL—Filed December 13, 1968

[Caption Omitted in Printing]

TO: THE STATE OF OREGON and GARY D. GORTMAKER, District Attorney for Marion County, Oregon, Attorney for Plaintiff.

Notice is hereby given that the above named defendant, Robert Apodaca, appeals to the Supreme Court of the State of Oregon from the judgment entered in the above

entitled case on the 14th day of October, 1968, and from the whole thereof.

Dated this 13th day of December, 1968.

/s/ Gary D. Babcock
Public Defender
Attorney for Defendant

* * * *

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

No. 21858

STATE OF OREGON, RESPONDENT

vs.

ROBERT APODACA, APPELLANT

OPINION—Filed December 24, 1969

SCHWAB, C. J.

Each of the defendants named, having been found guilty of a felony by a jury, appeals.[1]

The sole contention in each appeal is that under the Constitution of the United States the defendant was entitled to have the jury instructed that to find him guilty the jurors must unanimously agree as to his guilt. This issue has been decided *contra* to the defendants' contention in State v. Gann, —— Or Adv Sh ——, —— Or ——, —— P2d ——, handed down by the Oregon Supreme Court on December 19, 1969.

Affirmed.

[1] None of these appeals involve a first-degree murder conviction.

* * * *

LETTER OF COURT OF APPEALS—Filed January 27, 1970

[Caption Omitted in Printing]

Gary D. Babcock, Esq.
Public Defender
Labor & Industries Building
Salem, Oregon 97310

Re: State v. Robert Apodaca

Dear Mr. Babcock:

I am directed to inform you that the Court has today denied Appellant's Petition for Rehearing in the above entitled matter.

Very truly yours,

/s/ [Illegible]
Clerk

FMS:d
cc: Hon. Gary D. Gortmaker
District Attorney
Marion County Courthouse
Salem, Oregon 97301

* * * *

LETTER OF SUPREME COURT—Filed March 10, 1970

[Caption Omitted in Printing]

Gary D. Babcock
Public Defender
Labor and Industries Building
Salem, Oregon

Re: State v. Robert Apodaca

Dear Mr. Babcock:

I am directed to inform you that the Court has today denied appellant's petition for review in the above matter.

Very truly yours,

/s/ [Illegible]
Clerk

cc: Gary D. Gortmaker
District Attorney
Marion County Courthouse
Salem, Oregon 97301

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR LANE COUNTY

90546

THE STATE OF OREGON, PLAINTIFF

vs.

HARRY MORGAN COOPER, JR., DEFENDANT

INDICTMENT—Filed Aug. 12, 1968

The above named HARRY MORGAN COOPER, JR. is accused by the Lane County Grand Jury by this Indictment of the crime of BURGLARY IN A DWELLING committed as follows:

The said HARRY MORGAN COOPER, JR. on or about the 9th day of June, 1968, in the county aforesaid, did then and there wilfully and unlawfully break and enter the dwelling house of Richard Allan Schun located at 485 Garden Way, Eugene, Oregon, with intent to steal therein; contrary to statute and against the peace and dignity of the State of Oregon.

Dated this 12th day of August, 1968, at Eugene, Lane County, Oregon.

* * * *

PLEA—Filed Aug. 16, 1968

[Caption Omitted in Printing]

This matter coming on before Honorable Edward Leavy, Circuit Judge, this 16th day of August, 1968, the State of Oregon appearing by Stephen Keutzer, Deputy District Attorney for Lane County, Oregon, and the defendant Harry Morgan Cooper, Jr. appearing in person, in custody, and being represented by his attorney, John Meyer, said defendant having been arraigned upon a charge of the crime of "BURGLARY IN A DWELLING", and this

being the time fixed for said defendant to enter his plea. Thereupon said defendant entered his oral plea of "not guilty" to the crime of "BURGLARY IN A DWELLING".

Dated this 16th day of August, 1968.

* * * *

VERDICT—Filed Nov. 15, 1968

[Caption Omitted in Printing]

We, the jury, duly empaneled and sworn to try the above entitled action, find the above name defendant, Harry Morgan Cooper, Jr. guilty of the crime charged in the indictment.

Dated this 15 day of November, 1968.

/s/ Richard Kerns
Foreman

* * * *

TRIAL ENTRY—Filed Nov. 15, 1968

[Caption Omitted in Printing]

Now at this time the above entitled case came on for further trial, present the same as upon adjournment.

Trial proceeded whereupon the witness, Roy Dirks, was examined out of the presence of the jury, and the court having heard the testimony and being fully advised found that the statements made by the defendant to Roy Dirks were freely and voluntarily given and that the defendant had been advised of his rights.

Trial proceeded and during the presentation of the State's case the defendant made motions for mistrial, which were denied by the court.

Trial proceeded, and after hearing all the evidence and argument of counsel, the jury was instructed to retire to consider its verdict. Later in said day, the jury returned into court the following verdict.

(Insert)

Thereupon at the request of counsel, the jury was polled, and the poll of said jury developed ten (10) in favor of said verdict and two (2) opposed to the said verdict.

IT WAS ORDERED, that said verdict be received and filed and the jury discharged from further consideration of said cause.

IT WAS FURTHER ORDERED that time for sentencing be deferred and a pre-sentence investigation ordered. Defendant was remanded to the custody of the Sheriff of Lane County, Oregon.

Dated this 15th day of November, 1968.

* * * *

JUDGMENT—Filed Dec. 23, 1968

[Caption Omitted in Printing]

Now at this time this cause came on to be heard, the State of Oregon appearing by Robert Naslund, Deputy District Attorney for Lane County, Oregon, and the defendant, Harry Morgan Cooper, Jr., appearing in person, in custody, and being represented by John Meyer, his attorney, said defendant having been duly tried and convicted of the crime of "BURGLARY IN A DWELLING" before a jury in the above entitled court and cause and this being the time fixed for sentence herein, and the court being fully advised,

IT IS HEREBY ORDERED AND ADJUDGED that said defendant, Harry Morgan Cooper, Jr., be, and he hereby is sentenced to imprisonment for a term not to exceed three and one-half (3½) years, and he is hereby committed to the legal and physical custody of the Corrections Division of the Oregon State Board of Control, and

IT IS FURTHER ORDERED that the Sheriff of Lane County, Oregon deliver said defendant to the custody of the Superintendent of the Oregon Correctional Institution, and

IT IS FURTHER ORDERED that the State have and recover judgment against the defendant for its costs and disbursements incurred herein, to be taxed, to be paid in the first instance to Lane County, Oregon.

Dated this 23rd day of December, 1968.

/s/ Edwin R. Allen
Circuit Judge

* * * *

NOTICE OF APPEAL—Filed Feb. 19, 1969

[Caption Omitted in Printing]

TO: THE STATE OF OREGON and JOHN B. LEAHY, District Attorney for Lane County, Oregon, Attorney for Plaintiff.

Notice is hereby given that the above named defendant, Harry Morgan Cooper, appeals to the Supreme Court of the State of Oregon from the judgment heretofore entered in the above entitled cause on the 23rd day of December, 1968, and from the whole thereof.

Dated this 17th day of February, 1969.

/s/ J. MARVIN KUHN
Deputy Public Defender
Attorney for Defendant

* * * *

IN THE COURT OF APPEALS OF THE STATE OF OREGON

No. 21966

STATE OF OREGON, RESPONDENT

vs.

HARRY MORGAN COOPER, JR., APPELLANT

OPINION—Filed Dec. 24, 1969

SCHWAB, C. J.

Each of the defendants named, having been found guilty of a felony by a jury, appeals.[1]

The sole contention in each appeal is that under the Constitution of the United States the defendant was entitled to have the jury instructed that to find him guilty the jurors must unanimously agree as to his guilt. This issue has been decided *contra* to the defendants' contention in State v. Gann, —— Or Adv Sh ——, —— Or ——, —— P2d ——, handed down by the Oregon Supreme Court on December 19, 1969.

Affirmed.

[1] None of these appeals involve a first-degree murder conviction.

* * * *

LETTER OF COURT OF APPEALS—Filed Jan. 27, 1970

[Caption Omitted in Printing]

J. Marvin Kuhn, Esq.
Deputy Public Defender
Labor & Industries Building
Salem, Oregon 97310

Re: State v. Harry Morgan Cooper, Jr.

Dear Mr. Kuhn:

I am directed to inform you that the Court has today denied Appellant's Petition for Rehearing in the above entitled matter.

Very truly yours,

FMS:d
cc: Hon. John B. Leahy
District Attorney
Lane County Courthouse
Eugene, Oregon 97401

/s/ [Illegible]
Clerk

* * * *

LETTER OF SUPREME COURT—Filed March 10, 1970

[Caption Omitted in Printing]

J. Marvin Kuhn, Esq.
Deputy Public Defender
Labor & Industries Building
Salem, Oregon

Re: State v. Harry Morgan Cooper, Jr.

Dear Mr. Kuhn:

I am directed to inform you that the Court has today denied appellant's petition for review in the above matter.

Very truly yours,

/s/ [Illegible]
Clerk

cc: Hon. John B. Leahy
District Attorney
Lane County Courthouse
Eugene, Oregon 97401

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR LANE COUNTY

91211

THE STATE OF OREGON, PLAINTIFF

vs.

JAMES ARNOLD MADDEN, DEFENDANT

INDICTMENT—Filed Sept. 17, 1968

The above named JAMES ARNOLD MADDEN is accused by the Lane County Grand Jury by this Indictment of the crime of GRAND LARCENY committed as follows:

The said JAMES ARNOLD MADDEN on or about the 20th day of May, 1968, in the county aforesaid, did then and there wilfully and unlawfully steal $140.00 in United States money, the property of Glen Elwood Haldorson; contrary to statute and against the peace and dignity of the State of Oregon.

Dated this 17th day of September, 1968, at Eugene, Lane County, Oregon.

* * * *

ARRAIGNMENT AND PLEA—Filed Sept. 18, 1968

[Caption Omitted in Printing]

This matter coming on before Honorable Edward Leavy, Circuit Judge, this 18th day of September, 1968, the State of Oregon appearing by John B. Leahy, District Attorney for Lane County, Oregon and the defendant James Arnold Madden appearing in person and being represented by his attorney, Donald Wilson, having been indicted by the Grand Jury of Lane County, Oregon, upon a charge of the crime of "GRAND LARCENY".

Said defendant was then arraigned by having the Indictment read to him in open Court and a true copy thereof, including all endorsements thereon handed to his attorney.

Thereupon said defendant waived time in which to enter his plea and entered his oral plea of "not guilty" to the crime of "GRAND LARCENY".

Dated this 18th day of September, 1968.

* * * *

TRIAL ENTRY AND VERDICT—Filed Dec. 10, 1968

[Caption Omitted in Printing]

Now at this time the above entitled cause came duly on for trial before the Honorable Douglas R. Spencer, the State of Oregon appearing by John E. Moore, Deputy District Attorney for Lane County, Oregon, the defendant, JAMES ARNOLD MADDEN, being present in person, in custody, and being represented by his attorney, Donald Wilson, and the issues herein being joined and this being the time fixed for trial,

IT WAS ORDERED that a jury come, and thereupon the following jurors were duly drawn, examined and sworn to try the said cause:

Walter G. Reck; Edith R. Grabe; Dorothy R. Decker; Maureen E. Mesecher; James D. Blankenship; Anna Ruzicka; Josephine F. Kilwien; Auda M. Thompson, Norine M. Arens; Royal B. Wymer; Oreta B. Wheeler; and Gladys Burk.

Trial proceeded, and the defendant moved to exclude witnesses, which motion was allowed.

Trial proceeded, the State presented opening statement and the defendant waived opening statement.

Trial proceeded, and Deputy Roy H. Dirks and the defendant were examined out of the presence of the jury, and the Court having heard their testimony determined that the statements of the defendant were voluntary.

Trial proceeded, and after hearing all the evidence and argument of counsel, the jury was instructed to retire to consider its verdict. Later in said day, the jury returned the following verdict:

We, the jury, duly empaneled and sworn to try the above entitled action, find the above named defendant, James Arnold Madden Guilty of the Crime charged in the indictment.

Dated 10 day of December 1968.

/s/ James D. Blankenship
Foreman

At the request of counsel for the State the jury was polled, and the poll of the jury developed 11 in favor and 1 opposed to the said verdict. It was ordered that said verdict be received and filed and the jury discharged from further consideration of said cause.

Imposition of sentence was deferred pending receipt of a pre-sentence investigation report previously ordered in Case No. 91212. The State recommended that bail be set in the amount of $2,000.00 and the defendant requested that the release on his own recognizance ordered herein remain in effect. Thereupon, bail was set in the amount of $1,000.00 pending imposition of sentence.

Thereupon, counsel stipulated orally that copies of exhibits A, B and C could be substituted for the originals herein. Mr. Moore is to prepare a stipulation to that effect.

Dated this 10th day of December, 1968.

* * * *

JUDGMENT—Filed Dec. 27, 1968

[Caption Omitted in Printing]

Now at this time this cause came on to be heard, the State of Oregon appearing by John E. Moore, Deputy District Attorney for Lane County, Oregon, and the defendant, JAMES ARNOLD MADDEN, appearing in person, in custody, and being represented by his attorney, Donald Wilson, said defendant having been duly tried and convicted of the crime of "GRAND LARCENY" before a jury in the above entitled court and cause and this being the time fixed for sentence herein, and the Court being fully advised,

IT IS HEREBY ORDERED AND ADJUDGED that said defendant, JAMES ARNOLD MADDEN, be, and he is hereby sentenced to imprisonment for a term not to exceed three (3) years, said sentence to run concurrently with the sentence imposed this date in Case No. 91212 of the Circuit Court of the State of Oregon for the County of Lane in which the defendant was sentenced to imprisonment in the Oregon State Penitentiary for a term not to exceed fifteen (15) years, and he is hereby committed to the legal and physical custody of the Corrections Division of the Oregon State Board of Control, and

IT IS FURTHER ORDERED that the sheriff of Lane County, Oregon deliver said defendant to the custody of the Warden of the Oregon State Penitentiary.

IT IS FURTHER ORDERED that the State have and recover judgment against the defendant for its costs and disbursements incurred herein, to be taxed, to be paid in the first instance to Lane County, Oregon.

DATED this 27th day of December, 1968.

/s/ Douglas R. Spencer
Circuit Judge

* * * *

NOTICE OF APPEAL—Filed Jan. 15, 1969

[Caption Omitted in Printing]

TO: THE STATE OF OREGON and JOHN B. LEAHY, District Attorney for Lane County, Oregon, Attorney for Plaintiff.

Notice is hereby given that the above named defendant, James Arnold Madden, appeals to the Supreme Court of the State of Oregon from the judgment heretofore entered in the above entitled cause on the 27th day of December, 1968, and from the whole thereof.

Dated this 14th day of January, 1969.

/s/ GARY D. BABCOCK
Public Defender
Attorney for Defendant

* * * *

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

No. 21911

STATE OF OREGON, RESPONDENT

vs.

JAMES ARNOLD MADDEN, APPELLANT

OPINION—Filed Dec. 24, 1969

SCHWAB, C. J.

Each of the defendants named, having been found guilty of a felony by a jury, appeals.[1]

The sole contention in each appeal is that under the Constitution of the United States the defendant was entitled to have the jury instructed that to find him guilty the jurors must unanimously agree as to his guilt. This issue has been decided *contra* to the defendants' contention in State v. Gann, —— Or Adv Sh ——, —— Or ——, —— P2d ——, handed down by the Oregon Supreme Court on December 19, 1969.

Affirmed.

[1] None of these appeals involve a first-degree murder conviction.

* * * *

LETTER OF COURT OF APPEALS—Filed Jan. 27, 1970

[Caption Omitted in Printing]

Gary D. Babcock, Esq.
Public Defender
Labor & Industries Building
Salem, Oregon 97310

Re: State v. James Arnold Madden

Dear Mr. Babcock:

I am directed to inform you that the Court has today denied Appellant's Petition for Rehearing in the above matter.

Very truly yours,

FMS:d /s/ [Illegible]
cc: Hon. John B. Leahy Clerk
District Attorney
Lane County Courthouse
Eugene, Oregon 97401

* * * *

LETTER OF SUPREME COURT—Filed March 10, 1970

[Caption Omitted in Printing]

Hon. Gary D. Babcock
Public Defender
Labor and Industries Building

Re: State v. James Arnold Madden

Dear Mr. Babcock:

I am directed to inform you that the Court has today denied appellant's petition for review in the above matter.

Very truly yours,

/s/ [Illegible]
Clerk

cc: Hon. John B. Leahy
District Attorney
Lane County Courthouse
Eugene, Oregon 97401

SUPREME COURT OF THE UNITED STATES

No. 5338, October Term, 1970

ROBERT APODACA, HARRY MORGAN COOPER, JR., and JAMES ARNOLD MADDEN, PETITIONERS

v.

OREGON

On petition for writ of Certiorari to the Court of Appeals of the State of Oregon.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 9, 1970

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